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C O N F I D E N T I A L SECTION 01 OF 02 KYIV 000816

SIPDIS

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TAGS: [PGOV](#) [PREL](#) [UP](#)
SUBJECT: CONSTITUTIONAL COURT DECLARES OCTOBER 25
PRESIDENTIAL ELECTION DATE UNCONSTITUTIONAL

REF: KYIV 581

Classified By: Acting DCM Colin Cleary for reasons 1.4(b,d)

Summary

[¶1.](#) (C) On May 13 the Constitutional Court (CC) declared that the October 25 presidential election date set by the Rada was unconstitutional. The court ruling did not set a specific alternative date for the election -- the Presidential Secretariat continues to argue for a January 17, 2010 contest. Under the Constitution only the Rada may set a presidential election date. Rada contacts indicated that they had not settled on next steps, but that they may make another attempt to set the election before January. End Summary.

Constitutional Court Slaps Down October 25 Election Date

[¶2.](#) (SBU) In a May 13 ruling, the Constitutional Court announced that the October 25 presidential election date was unconstitutional. The Rada had set the election date in an April 1 resolution that garnered 401 votes (out of 450) -- President Yushchenko opposed the Rada resolution and brought the matter before the court. In announcing the decision, CC Chairman Andriy Strizhak did not explicitly announce on what date the election should be held. Rather, the decision reiterated constitutional articles 104 and 103 that govern presidential elections, ruling that the president's five-year term begins when he takes the oath of office, and the election should be held on the last Sunday of the last month of the fifth year of the president's term. As a part of the decision, the court also ruled unconstitutional the Law on Presidential Elections, which sets the presidential election date on October 25.

[¶3.](#) (C) Presidential Secretariat representatives contended that, because Yushchenko was sworn in on January 25, 2005, the next election date should be January 17, 2010. Legal and Constitutional Analyst Ihor Kuliushko told us that, while "sloppily written," the constitution clearly spelled out the legal basis for a January 2010 election, and any court decision that would allow the election to proceed in October would be a political decision. Kuliushko was careful to distinguish between "early" presidential elections and regularly scheduled elections, noting that early elections could be held any time if Yushchenko resigned or was removed from office.

Door Left Open to Further Political Wrangling

[¶4.](#) (SBU) Ivan Dombrovskiy, the CC's reporting judge, noted that the court did not compel the Rada to set a specific presidential election date. He said that the Rada could choose a presidential date other than January 17, 2010 based on a number of different arguments and, so long as its

decision was not again referred to the court, it would stand.

PM Tymoshenko noted that the President "received another couple months of work" from the court, but that she could not comment on what date the election would be held because "the Rada must set the date."

15. (C) Coalition contacts had varied reactions to the ruling, as the coalition had not yet decided how it would proceed and was currently pre-occupied with Party of Region's blockade of the Rada over its demand that Interior Minister Lutsenko be removed from his position (septel). BYuT MP Oleh Lyashko told us that a January 2010 election would be "too late." He said that, while they were still in the initial stages of formulating a strategy, BYuT would likely push for a Rada vote to again set an election date prior to January 17, 2010, possibly in November.

16. (C) BYuT MP Serhiy Mishchenko told us that BYuT would have to be sensitive to the court's decision in plotting its next steps as they would not want to be seen as "ignoring" the decision completely. He speculated that BYuT could decide to push for a December 27, 2009 election date as a legal argument could be made that 2009 is the fifth year of the President's term, and December 27 would be the last Sunday of the last month of 2009.

17. (C) BYuT MP Valeriy Pysarenko said BYuT would be likely to just set the date for January 17, as there was little legal basis for any other date after the court's decision. Pro-coalition OU-PSD MP Mykola Katerynychuk said that, while he preferred to just set the date for January 17 and move on, the Rada would be likely to try another date. Afterall, he

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said, there are "a lot of Sundays" between October 25 and January 17.

Comment

18. (C) The court's ruling was not unexpected and represents a victory for Yushchenko. Most analysts, and many MPs who voted for the resolution, agreed that the October 25 election date was based on a dubious legal foundation. The decision does leave room for further maneuvering in the Rada, however, by not explicitly ruling what the election date should be. Tymoshenko believes an earlier election date would be to her advantage, so we could see another BYuT attempt to schedule the presidential elections prior to January 2010.

TAYLOR